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Fast Track Proposed Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC 25-720-50.B.
Regulation title	Water Quality Management Planning Regulation
Action title	Amendments to Water Quality Management Planning Regulation; Potomac-Shenandoah River Basin non-TMDL waste load allocation addition
Date this document prepared	February 2, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes.

The addition of a BOD5 waste load allocation is proposed for the Skyline Swannanoa STP (VA0028037). The VPDES permit for this facility was re-issued June 26, 2006. At the time of permit development, it was determined that the original stream model (8/6/74) utilized did not consider the potential for any residual oxygen demand at the confluence of the unnamed tributary with the South River. In-stream water quality conditions on this section of the South River were subsequently predicted by the EPA Stream Model for South River in the Vicinity of Waynesboro, Virginia dated 1976, re-verified 1984 and reviewed in 1990. This model had been used previously to allocate BOD5 to four dischargers on this section of the South River (Waynesboro STP, Crompton-Shenandoah, Wayn-Tex and DuPont (now INVISTA)). Crompton-Shenandoah ceased discharging in 1984 and Wayn-Tex ceased discharging in 1992. These two facilities were removed from Part B of the Potomac-Shenandoah Water Quality Management Planning regulation when it was revised and adopted by the State Water Control Board on September 28, 2005. This leaves a portion of un-allocated BOD5 waste load allocation in the South River. Based on this available waste load allocation and the verification model, the limits outlined in the following table were demonstrated to be protective of water quality conditions in the South River. The amended WQMP should appear as such,

Water body	Permit No	Facility Name	Outfall No	Receiving Stream	River Mile	Parameter Description	WLA	Units WLA
<u>VAV-B32R</u>	<u>VA0028037</u>	<u>Skyline Swannanoa STP</u>	<u>001</u>	<u>South River UT</u>	<u>2.96</u>	<u>BOD5</u>	<u>8.5</u>	<u>KG/D</u>

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

At their March 2007 meeting, the State Water Control Board adopted the following recommendations by staff of the Department of Environmental Quality:

1. That the Board authorize the Department to promulgate the proposed amendment to 9 VAC 25-720-50.B of the Water Quality Management Planning Regulation for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization should also be understood to constitute its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. That the Board authorize the Department to set an effective date 30 days after close of the 60-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.
3. Should the proposal fail to complete the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act or changes to the proposal be needed, it is recommended that the Board authorize the Director to make the decision under 9 VAC 25-10-30.C. concerning the use of the participatory approach or alternatives.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the scope of the legal authority and the extent to which the authority is mandatory or discretionary.

State mandate in the Code of Virginia, §62.1-44.15, is the source of legal authority identified to promulgate these amendments. The promulgating entity is the State Water Control Board.

The scope and purpose of the State Water Control Law is to protect and to restore the quality of state waters, to safeguard the clean waters from pollution, to prevent and to reduce pollution and to promote water conservation. The State Water Control Law (Code of Virginia) at §62.1-44.15(10) mandates the Board to adopt such regulations as it deems necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth. In addition, §62.1-44.15(14) requires the

Board to establish requirements for the treatment of sewage, industrial wastes and other wastes that are consistent with the purposes of this chapter. The specific effluent limits needed to meet the water quality goals are discretionary.

The correlation between the proposed regulatory action and the legal authority identified above is that the amendment being considered will add a waste load allocation that has been shown to be protective of water quality and that will contribute to the attainment of the Virginia Water Quality Standards.

Purpose

Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.

The amendment is needed to reflect the water quality based effluent limit that was recently developed for the Skyline Swannanoa STP. It represents an allocation of BOD5 that is available due to the cessation of discharge by two other facilities from this portion of the South River. This allocation has been shown to be protective of water quality.

Rationale for using fast track process

Please explain the rationale for using the fast track process in promulgating this regulation. Why do you expect this rulemaking to be noncontroversial?

Please note: If an objection to the use of the fast-track process is received within the 60-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.

The proposed amendment is expected to be non-controversial, and therefore justifies using the fast-track process. The amendment will reflect effluent limitations outlined in the current VPDES permit that have been shown to be protective of water quality for the South River. The current VPDES permit for the Skyline Swannanoa STP was re-issued on June 26, 2006. Prior to re-issuance, the permit was reviewed by EPA and public noticed with all public comment issues addressed.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (Provide more detail about these changes in the "Detail of changes" section.)

In 9 VAC 25-720-50. B., add Skyline Swannanoa STP, outfall 001, located in VAV-B32R on a South River UT at river mile 2.96 with a BOD5 limit of 8.5 kg/d.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
 - 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
 - 3) other pertinent matters of interest to the regulated community, government officials, and the public.*
- If there are no disadvantages to the public or the Commonwealth, please indicate.*

The public will benefit, as these amendments will ensure the attainment and preservation of water quality standards in the South River downstream of the Skyline Swannanoa STP discharge. There is no disadvantage to the agency or the Commonwealth that will result from the adoption of these amendments.

Requirements more restrictive than federal

Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.

The amendment does not include requirements exceeding applicable federal requirements.

Localities particularly affected

Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.

Only Skyline Swannanoa Inc. (owner of Skyline Swannanoa STP) is particularly affected by the proposed amendments.

Regulatory flexibility analysis

Please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum:

- 1) the establishment of less stringent compliance or reporting requirements;*
- 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements;*
- 3) the consolidation or simplification of compliance or reporting requirements;*
- 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and*
- 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.*

N/A.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures	None
Projected cost of the regulation on localities	N/A
Description of the individuals, businesses or other entities likely to be affected by the regulation	Amendment impacts a sewage treatment plant.
Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	One.
All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.	None.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in §2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.

No viable alternative approach, less burdensome or intrusive, identified.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

No direct impact expected.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
9 VAC 25-720-50.B.		None	Add new row and facility <ul style="list-style-type: none"> • Waterbody = VAV-B32R • Permit No = VA0028037 • Facility Name = Skyline Swannanoa STP • Receiving Stream = South River UT • River Mile = 2.96 • Parameter Description = BOD5 • WLA = 8.5 • Units WLA = KG/D